

Attorney's Docket No. _____

COMBINED DECLARATION AND POWER OF ATTORNEY

(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,
CONTINUATION OR CIP)

As a below-named inventor, I hereby declare that:

TYPE OF DECLARATION

This declaration is of the following type: (check one applicable item
below)

- original
 design
 supplemental

NOTE: If the declaration is for an International Application being filed as a
divisional, continuation or continuation-in-part application do not check next
item; check appropriate one of last three items.

- national stage of PCT

NOTE: If one of the following 3 items apply, then complete and also attach ADDED PAGES
FOR DIVISIONAL, CONTINUATION OR C-I-P.

- divisional
 continuation
 continuation-in-part (C-I-P).

INVENTORSHIP IDENTIFICATION

WARNING: If the inventors are each not the inventors of all the claims, an
explanation of the facts, including the ownership of all the claims at the
time the last claimed invention was made, should be submitted.

My residence, post office address and citizenship are as stated below,
next to my name. I believe that I am the original, first and sole
inventor (if only one name is listed below) or an original, first and
joint inventor (if plural names are listed below) of the subject matter
that is claimed, and for which a patent is sought on the invention
entitled:

TITLE OF INVENTION

**PROTECTIVE CUSHION AND COOPERATIVELY ENGAGEABLE HELMET CASING FOR
ANESTHETIZED PATIENT**

SPECIFICATION IDENTIFICATION

the specification of which:

(complete (a), (b) or (c))

(a) is attached hereto.

(b) was filed on _____ as

Serial No. _____ or

Express Mail No., as Serial No. not yet known _____
and was amended on _____ (if applicable).

NOTE: Amendments filed after the original papers are deposited with the PTO which contain new matter are not accorded a filing date by being referred to in the declaration. Accordingly, the amendments involved are those filed with the application papers or, in the case of a supplemental declaration, are those amendments claiming matter not encompassed in the original statement of invention or claims. See 37 CFR 1.67.

(c) was described and claimed in PCT International
No. _____ filed on _____ and as amended
under PCT Article 19 on _____ (if any).

ACKNOWLEDGMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37, Code of Federal Regulations § 1.56,

(also check the following items, if desired)

- and which is material to the examination of this application, namely, information where there is a substantial likelihood that a reasonable Examiner would consider it important in deciding whether to allow the application to issue as a patent, and
- In compliance with this duty, there is attached an information disclosure statement, in accordance with 37 CFR 1.98.

PRIORITY CLAIM

I hereby claim foreign priority benefits under Title 35, United States Code, § 119(a)-(d) of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international applications(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

(complete (d) or (e))

- (d) no such applications have been filed.
(e) such applications have been filed as follows.

NOTE: Where item (c) is entered above and the International Application which designated the U.S. itself claimed priority check item (e), enter the details below and make the priority claim.

**PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN 12 MONTHS
(6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION
AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. § 119(a)-(d)**

COUNTRY (or indicate if PCT)	APPLICATION NUMBER	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 USC 119

CLAIM FOR BENEFIT OF PRIOR U.S. PROVISIONAL APPLICATION(S)
(34 U.S.C. § 119(e))

I hereby claim the benefit under Title 35, United States Code, § 119(e) of any United States provisional application(s) listed below:

PROVISIONAL APPLICATION NUMBER

FILING DATE

_____ / _____

**CLAIM FOR BENEFIT OF EARLIER US/PCT APPLICATION(S)
UNDER 35 U.S.C. 120**

- The claim for the benefit of any such applications are set forth in the attached ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART (C-I-P) APPLICATION.

**ALL FOREIGN APPLICATION(S), IF ANY, FILED MORE THAN 12 MONTHS
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

NOTE: If the application filed more than 12 months from the filing date of this application is a PCT filing forming the basis for this application entering the United States as (1) the national stage, or (2) a continuation, divisional, or continuation-in-part, then also complete ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION OR C-I-P APPLICATION for benefit of the prior U.S. or PCT application(s) under 35 U.S.C. § 120.

POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (List name and registration number)

DONN K. HARMS
4565 Ruffner Street, Ste. 200
San Diego, CA 92111

REG. NO. 38,911

FRANK D. GILLIAM
4565 Ruffner Street, Ste. 200
San Diego, CA 92111

REG. NO. 26,548

JOHN R. DUNCAN
4565 Ruffner Street, Ste. 200
San Diego, CA 92111

REG. NO. 22,276

(check the following item, if applicable)

Attached, as part of this declaration and power of attorney, is the authorization of the above-named attorney(s) to accept and follow instructions from my representative(s).

SEND CORRESPONDENCE TO:

DIRECT TELEPHONE CALLS TO:

DONN K. HARMS
4565 Ruffner Street, Ste. 200
San Diego, CA 92111

DONN K. HARMS
Tel (619) 292-0901
Fax (619) 292-0905

DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

SIGNATURE (S)

NOTE: Carefully indicate the family (or last) name, as it should appear on the filing receipt and all other documents.

Full name of sole or first inventor WILLIAM MAZZEI, M.D.

Inventor's signature W.M.

Date 04/05/00 Country of Citizenship United States of America

Residence 9707 Caminito Suelto, San Diego Calif 92131

Post Office Address 9707 Caminito Suelto, San Diego, Calif 92131

Full name of second joint inventor, if any GREGORY P. JORDAN

Inventor's signature Greg Jordan

Date 04/05/00 Country of Citizenship United States

Residence 2695 Coventry Road, Carlsbad, California 92008

Post Office Address 2695 Coventry Road, Carlsbad, California 92008

Full name of third joint inventor, if any AN P. VU

Inventor's signature APV

Date 04/05/00 Country of Citizenship United States

Residence 320 Pomelo Drive, Vista, California 92083

Post Office Address 320 Pomelo Drive, Vista, California 92083

(check proper boxes) for any of the following added page(s)
that form a part of this declaration)

- Signature** for fourth and subsequent joint inventors. Number of pages added _____.

* * *

- Signature** by administrator(trix), executor(trix) or legal representative for deceased or incapacitated inventor.
Number of pages added _____.

* * *

- Signature** for inventor who refuses to sign or cannot be reached by person authorized under 37 CFR 1.47.
Number of pages added _____.

* * *

- Added page for **signature** by one joint inventor on behalf of deceased inventor(s) where legal representative cannot be appointed in time. (37 CFR 1.47)

* * *

- Added pages to combined declaration and power of attorney for divisional, continuation, or continuation-in-part (C-I-P) application.

- Number of pages added _____.

* * *

- Authorization of attorney(s) to accept and follow instructions from representative.

If no further pages form a part of this Declaration then end this Declaration with this page and check the following item

[XX] This declaration ends with this page

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit:

Examiner:

Inventor(s): WILLIAM MAZZEI; GREGORY P. JORDAN; AN B. VU;

Serial Number:

Filed: April 9, 2000

For: **Protective Cushion and Cooperatively Engageable Helmet Casing for Anesthetized Patient**

Patent No.

Issued:

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS
(37 CFR 1.9(f) AND 1.27(b)) - INDEPENDENT INVENTOR**

As a below named inventor, I hereby declare that I qualify as an independent inventor as defined in 37 CFR 1.9(c) for purposes of paying reduced fees under section 41(a) and (b) of Title 35, United States Code, to the Patent and Trademark Office with regard to the invention described in

- the specification filed herewith.
 the application whose serial number is set forth above.
 the patent set forth above.

I have not assigned, granted, conveyed or licensed and am under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not likewise be classified as an independent inventor under 37 CFR 1.9(c) if that person had made the invention, or to any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b)).

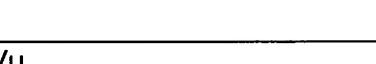
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Signature 
William Mazzei, M.D.

Date: April 5, 2000

Signature 
Gregory Jordan

Date: April 5, 2000

Signature 
An B. Vu

Date: April 5, 2000

ADDED PAGES FOR APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED

NOTE: "In order for an application to claim the benefit of a prior filed copending national application, the prior application must name as an inventor at least one inventor named in the later filed application and disclose the named inventor's invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112." 37 CFR 1.78(a).

NOTE: "In addition the prior application must be (1) complete as set forth in § 1.51, or (2) entitled to a filing date as set forth in § 1.53(b) and include the basic filing fee set forth in § 1.16; or (3) entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(d)." 37 CFR 1.78(a).

17. Relate Back

WARNING: If an application claims the benefit of the filing date of an earlier filed application under 35 U.S.C. 120, 121 or 365(c), the 20-year term of that application will be based upon the filing date of the earliest U.S. application that the application makes reference to under 35 U.S.C. 120, 121 or 365(c). (35 U.S.C. 154(a)(2) does not take into account, for the determination of the patent term, any application on which priority is claimed under 35 U.S.C. 119, 365(a) or 365(b).) For a c-i-p application, applicant should review whether any claim in the patent that will issue is supported by an earlier application and, if not, the applicant should consider canceling the reference to the earlier filed application. The term of a patent is not based on a claim-by-claim approach. See Notice of April 14, 1995, 60 Fed. Reg. 20,195, at 20,205.

(complete the following, if applicable)

- Amend the specification by inserting, before the first line, the following sentence:

A. 35 U.S.C. 119(e)

NOTE: "Any nonprovisional application claiming the benefit of one or more prior filed copending provisional applications must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior provisional application, identifying it as a provisional application, and including the provisional application number (consisting of series code and serial number)." 37 C.F.R. § 1.78(a)(4).

"This application claims the benefit of U.S. Provisional Application(s) No(s).:

APPLICATION NO(S).:

____ / ____ ; ____
____ / ____
____ / ____

FILING DATE

____ / ____ ; ____
____ / ____
____ / ____

B. 35 U.S.C. 120, 121 and 365(c)

NOTE: "Any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(b))." 37 C.F.R. § 1.78(2).

"This application is a

continuation

continuation-in-part

divisional

of copending application(s)

application number 09/080.975 filed on 5/19/98.

International Application _____ filed on _____ and which designated the U.S."

NOTE: The proper reference to a prior filed PCT application that entered the U.S. national phase is the U.S. serial number and the filing date of the PCT application that designated the U.S.

NOTE: (1) Where the application being transmitted adds subject matter to the International Application, then the filing can be as a continuation-in-part or (2) if it is desired to do so for other reasons then the filing can be as a continuation.

"The nonprovisional application designated above, namely application _____ / _____, filed _____, claims the benefit of U.S. Provisional Application(s) No(s).:

APPLICATION NO(S):

FILING DATE

_____ / _____

"

_____ / _____

"

_____ / _____

"

NOTE: The deadline for entering the national phase in the U.S. for an international application was clarified in the Notice of April 28, 1987 (1079 O.G. 32 to 46) as follows:

"The Patent and Trademark Office considers the International application to be pending until the 22nd month from the priority date if the United States has been designated and no Demand for International Preliminary Examination has been filed prior to the expiration of the 19th month from the priority date and until the 32nd month from the priority date if a Demand for International Preliminary Examination which elected the United States of America has been filed prior to the expiration of the 19th month from the priority date, provided that a copy of the international application has been communicated to the Patent and Trademark Office within the 20 or 30 month period respectively. If a copy of the international application has not been communicated to the Patent and Trademark Office within the 20 or 30 month period respectively, the international application becomes abandoned as to the United States 20 or 30 months from the priority date respectively. These periods have been placed in the rules as paragraph (h) of § 1.494 and paragraph (l) of § 1.495. A continuing application under 35 U.S.C. 365(c) and 120 may be filed anytime during the pendency of the international application."

18. Relate Back—35 U.S.C. 119 Priority Claim for Prior Application

The prior U.S. application(s), including any prior International Application designating the U.S., identified above in item 17B, in turn itself claim(s) foreign priority(ies) as follows:

country	appl. no.	filed on
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The certified copy(ies) has (have)

- been filed on _____, in prior application O /_____, which was filed on _____.
- is (are) attached.

WARNING: *The certified copy of the priority application that may have been communicated to the PTO by the International Bureau may not be relied on without any need to file a certified copy of the priority application in the continuing application. This is so because the certified copy of the priority application communicated by the International Bureau is placed in a folder and is not assigned a U.S. serial number unless the national stage is entered. Such folders are disposed of if the national stage is not entered. Therefore, such certified copies may not be available if needed later in the prosecution of a continuing application. An alternative would be to physically remove the priority documents from the folders and transfer them to the continuing application. The resources required to request transfer, retrieve the folders, make suitable record notations, transfer the certified copies, enter and make a record of such copies in the Continuing Application are substantial. Accordingly, the priority documents in folders of international applications that have not entered the national stage may not be relied on. Notice of April 28, 1987 (1079 O.G. 32 to 46).*

19. Maintenance of Copendency of Prior Application

NOTE: *The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the continuation application. Notice of November 5, 1985 (1060 O.G. 27).*

- A.** Extension of time in prior application

(This item must be completed and the papers filed in the prior application, if the period set in the prior application has run.)

- A petition, fee and response extends the term in the pending prior application until _____.

A copy of the petition filed in prior application is attached.

- B.** Conditional Petition for Extension of Time in Prior Application

(complete this item, if previous item not applicable)

- A conditional petition for extension of time is being filed in the pending prior application.

A copy of the conditional petition filed in the prior application is attached.

20. Further Inventorship Statement Where Benefit of Prior Application(s) Claimed

NOTE: "If the continuation, continuation-in-part, or divisional application is filed by less than all the inventors named in the prior application a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation, continuation-in-part, or divisional application." 37 CFR 1.62(a) [emphasis added]. (dealing with the file wrapper continuation situation).

NOTE: "In the case of a continuation-in-part application which adds and claims additional disclosure by amendment, an oath or declaration as required by § 1.63 must be filed. In those situations where a new oath or declaration is required due to additional subject matter being claimed, additional inventors may be named in the continuing application. In a continuation or divisional application which discloses and claims only subject matter disclosed in a prior application, no additional oath or declaration is required and the application must name as inventors the same or less than all the inventors in the prior application." 37 CFR 1.60(c) (dealing with the continuation situation).

(complete applicable item (a), (b) and/or (c) below)

- (a) This application discloses and claims only subject matter disclosed in the prior application whose particulars are set out above and the inventor(s) in this application are
 the same.
 less than those named in the prior application. It is requested that the following inventor(s) identified for the prior application be deleted:

(type name(s) of inventor(s) to be deleted)

- (b) This application discloses and claims additional disclosure by amendment and a new declaration or oath is being filed. With respect to the prior application, the inventor(s) in this application are
 the same.
 the following additional inventor(s) have been added:
GREGORY P. JOEDAN, AN B. JV
(type name(s) of inventor(s) to be added)
- (c) The inventorship for all the claims in this application are
 the same.
 not the same. An explanation, including the ownership of the various claims at the time the last claimed invention was made
 is submitted.
 will be submitted.

21. Abandonment of Prior Application (if applicable)

- Please abandon the prior application at a time while the prior application is pending, or when the petition for extension of time or to revive in that application is granted, and when this application is granted a filing date, so as to make this application copending with said prior application.

NOTE: According to the Notice of May 13, 1983 (103, TMOG 6-7), the filing of a continuation or continuation-in-part application is a proper response with respect to a petition for extension of time or a petition to revive and should include the express abandonment of the prior application conditioned upon the granting of the petition and the granting of a filing date to the continuing application.

22. Petition for Suspension of Prosecution for the Time Necessary to File an Amendment

WARNING: "The claims of a new application may be finally rejected in the first Office action in those situations where (1) the new application is a continuing application of, or a substitute for, an earlier application, and (2) all the claims of the new application (a) are drawn to the same invention claimed in the earlier application, and (b) would have been properly finally rejected on the grounds of art of record in the next Office action if they had been entered in the earlier application." MPEP, § 706.07(b).

NOTE: Where it is possible that the claims on file will give rise to a first action final for this continuation application and for some reason an amendment cannot be filed promptly (e.g., experimental data is being gathered) it may be desirable to file a petition for suspension of prosecution for the time necessary.

(check the next item, if applicable)

- There is provided herewith a Petition To Suspend Prosecution for the Time Necessary to File An Amendment (New Application Filed Concurrently)

23. Small Entity (37 CFR § 1.28(a))

- Applicant has established small entity status by the filing of a verified statement in parent application 61/080,975 on 05/19/98.

- A copy of the verified statement previously filed is included.

WARNING: "Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been established. Applications filed as continuations, divisions or continuations-in-part of a parent application must include a reference to a verified statement filed in the parent application if status as a small entity is still proper and desired." 37 CFR § 1.28(a).

24. NOTIFICATION IN PARENT APPLICATION OF THIS FILING

- A notification of the filing of this
(check one of the following)

- continuation
 continuation-in-part
 divisional

is being filed in the parent application, from which this application claims priority under 35 U.S.C. § 120.